



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

AUG 24 2006

(A-18J)

Kevin Kessler, Acting Director  
Bureau of Air Management  
Wisconsin Department of Natural Resources  
101 South Webster Street  
P.O. Box 7921  
Madison, Wisconsin 53707-7921

Dear Mr. *Kessler* Kessler:

On September 20-21, 2005, the United States Environmental Protection Agency (USEPA) conducted an on-site evaluation of the Wisconsin Department of Natural Resources (WDNR) Title V operating permit program. This review was initiated as a result of USEPA's commitment to USEPA's Inspector General to carry out Title V program evaluations nationwide. The purpose of the evaluations is to note practices that could be helpful to other permitting authorities, document areas needing improvement and learn how USEPA can help permitting authorities to achieve these improvements. Enclosed you will find a copy of our final report on WDNR's Title V permit program.

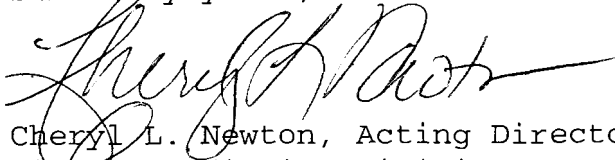
As part of our evaluation, we were to identify WDNR's Title V permit program strengths and those areas needing improvement. WDNR's strengths include having well-organized permits and detailed technical support documents, maintaining and continually improving permit templates, as well as the implementation of its Air Permit Improvement Initiative to improve the efficiency of the permitting process. Some of the areas needing improvement include reducing permit issuance backlogs for Title V renewal permits, and making improvements to the State's on-line permit tracking system to provide more user friendly information and address data management needs.

We would like to continue to work with you to address the areas needing improvement. During our site visit, WDNR also made suggestions to USEPA regarding its concerns with the uncertainty of certifying compliance and determining monitoring for certain units and issues with Title V and New Source Review permitting

interface. In response to these suggestions, Region 5 will elevate issues arising in the State for resolution, and will keep WDNR apprised of national policy developments, as some of these issues are being discussed at the national level. In addition, Region 5 has scheduled a state air permit workshop for this fall which will give the WDNR an opportunity to propose topics it would like USEPA to discuss.

We would like to thank your staff for their assistance with the evaluation and their efforts to respond to our questionnaire. If you have any questions, please feel free to contact me, or have your staff contact Susan Siepkowski, of my staff, at (312) 353-2654.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Cheryl L. Newton", with a long horizontal flourish extending to the right.

Cheryl L. Newton, Acting Director  
Air and Radiation Division

Enclosure

**Wisconsin  
Title V Program Review**

**Performed by USEPA Region 5  
September 2005**

**Final Report - June, 2006**

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- 1. Agreement for Concurrent Public and Federal Review of Title V Permits
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- 3. Instructions for Completion of the Air Operation Permit Compliance Certification
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- 5. WDNR's August 18, 2005 Final Response to the March 4, 2004, Notice of Deficiency

## **I. Executive Summary**

In September of 2005, the United States Environmental Protection Agency (USEPA), Region 5, conducted an evaluation of the Wisconsin Department of Natural Resources' (WDNR) Clean Air Act (the Act) Title V operating permit program. This evaluation was part of USEPA's ongoing oversight of state and local New Source Review (NSR) and Title V permit programs. This evaluation included a site visit and the review of several permit files.

Based on the evaluation, USEPA determined that WDNR's primary Title V program strengths include: issuance of detailed, well-organized Title V permits; inclusion of a thorough preliminary determination document (WDNR's equivalent of the Title V Statement of Basis requirement); a comprehensive Federally Enforceable State Operating Permit (FESOP) program; and maintenance of templates for consistent permit language. Areas found to be in need of improvement include: reducing the backlog of Title V renewal and modification permits to be issued, and improving the public electronic permit tracking system and data made available to USEPA. Additionally, WDNR has been exploring ways to better streamline its permit program and processes through its Air Permit Improvement Initiative (APII), and has been working closely with USEPA and stakeholders to do so.

## **II. Introduction**

In 2003, as part of its oversight role, USEPA began a four year initiative to review the implementation of the Title V and NSR permit programs by permitting authorities throughout the country. USEPA developed two standard program evaluation protocols in the form of questionnaires, one addressing Title V and one addressing NSR for Regional offices to use to conduct consistent reviews. The Title V program review consists of two components: a questionnaire about program implementation and a permit file review. The purpose of the program evaluation was to meet with each permitting authority to evaluate its implementation of the permit program, note practices that could be helpful to other permitting authorities, document areas needing improvement, and learn how USEPA can help the permitting authorities and further improve the national programs. The purpose of the permit file review was to evaluate the files with respect to Title V permit requirements.

On September 20<sup>th</sup> through 21<sup>st</sup>, 2005, Region 5 staff and management visited the WDNR offices in Madison, Wisconsin. During the visit, USEPA met with WDNR air program managers and staff to discuss in detail WDNR's preliminary program questionnaire responses, and to gather additional information for the questionnaire. Region 5 staff also conducted the source specific permit file review according to the criteria set forth in the questionnaire. The results of the discussions and file review are included in Appendices A and B.

The findings and conclusions in this report are based on the answers WDNR provided on the questionnaire, the file review, and USEPA staff knowledge of the program from experience with reviewing Wisconsin permits. As USEPA developed the final program evaluation report, the Agency sought additional input from WDNR to ensure the accuracy of the final product.

### **III. Description of WDNR's Program**

Wisconsin submitted to USEPA its program to fulfill the requirements of Title V of the Act and 40 C.F.R. part 70 on January 27, 1994. USEPA granted interim approval of Wisconsin's program on April 5, 1995. WDNR submitted corrections on March 28, 2001, September 5, 2001, and September 17, 2001 to address the issues identified in the interim approval. USEPA approved the corrections submitted by WDNR, and gave Wisconsin final full approval of its Title V program effective on November 30, 2001.

On March 4, 2004, USEPA published a Notice of Deficiency (NOD) for Wisconsin's Title V Operating Permit Program. The NOD was based upon USEPA's findings that the State's Title V program did not comply with the requirements of the Act or with the implementing regulations at 40 C.F.R. part 70 in several respects, including that Wisconsin: had failed to demonstrate its fees were sufficient to cover the costs of the Title V program and were used solely for Title V permit program costs; had failed to timely issue Title V permits; and had other deficiencies with the implementation of its operation permit program. Since USEPA's site visit, the NOD has subsequently been resolved. On February 27, 2006, USEPA published a Federal Register notice, notifying the public that Wisconsin had satisfactorily resolved the NOD issues. For more details about the NOD, or about the NOD resolution and Wisconsin's fee structure, see 69 Fed. Reg. 10167 (March 4, 2004) and 71 Fed.

Reg.'9720 (February 27, 2006), respectively.

The WDNR completed issuance of its initial Title V permits on December 30, 2004. As of September 2005, WDNR reported having issued approximately 510 initial Title V permits, 109 renewal permits, 113 significant permit modifications, and 611 synthetic minor operating permits.

#### **IV. Findings**

Below is a summary of the primary findings from the Wisconsin Title V program evaluation. For detailed information regarding Wisconsin's program, please refer to the program questionnaire and permit file review in Appendices A and B.

##### **A. Strengths**

###### **Permit and Preliminary Determination Content and Organization**

WDNR's preliminary determination (PD) contains considerable detail and typically contains a thorough review of the source, including permit history, detailed emission calculations, a list of applicable regulations, and other pertinent information. This thorough PD allows USEPA and the public to gain a better understanding of the rationale for WDNR's permitting decisions, and fulfills the intent of 40 C.F.R. § 70.7.

WDNR also organizes its permits by emission unit, using a table format such that, for each emission unit, the applicable emissions limitations and requirements are clearly identified. Then for each of these requirements, the associated monitoring, recordkeeping, and reporting is clearly identified.

Although a modeling analysis is not specifically required by part 70 for Title V permits, WDNR usually conducts one before issuing a Title V permit. This is beneficial in that it provides a more accurate account of the ambient air impact of the total potential emissions at a facility, as some units covered under the facility wide Title V permit may not have been permitted previously.

###### **Permit Template**

As part of its Operating Permit Program, WDNR maintains and frequently updates a permit template that contains all of the basic Title V boilerplate language and general permit conditions which are included in all permits. WDNR also maintains for its

permit writers' use current policy and guidance memos on an internal electronic user share drive. These templates allow WDNR to maintain a consistent permit structure and content, and allow for quicker permit development and issuance. Furthermore, when a language change is necessary due to a new policy or to address an issue, WDNR can make changes to the template allowing for quick fixes to all subsequently drafted permits.

### **Permit Webpage**

WDNR publishes all of its permit actions on-line, allowing the public up-to-date access to WDNR permit documents and decisions. The webpage is organized according to source name, and contains both operation and construction permits, listed by permit number. The dates of certain permit actions, such as when the permit was public noticed, its petition timeframe, when it expires, and other milestones are also tracked for each permit. The site is updated at least weekly, and permit documents can be easily downloaded. Documents available in the permit file typically include, a copy of the Title V permit (draft, proposed, and final), the PD, public notice, and any addenda.

### **Air Permit Improvement Initiative (APII)**

Wisconsin implemented APII to streamline its air permitting program through expanded permit exemptions, registration and general permits, permit consolidation, and other mechanisms. Wisconsin's Secretary initiated APII in 2003, and WDNR has dedicated considerable resources towards this initiative. The goal of APII is to create a more streamlined and less complicated permitting system so that WDNR staff can spend less time writing permits and more time assisting companies with compliance issues.

Several workgroups have been created under APII to address various aspects of the air program. These workgroups consist of WDNR permit staff and management, as well as stakeholders, including industry, environmental groups, and USEPA. The groups have focused in on several areas, including, the public participation process and outreach, improving materials available on-line, conducting citizen trainings, improving construction and operation permit interface, and developing a number of alternatives to traditional permitting. As a result, WDNR has already developed a registration and general permit rule, drafted registration permits, revised its public notice document, and added permit program description information for the public and potential applicants to its website.



### **Federally Enforceable State Operating Permits (FESOPs)**

WDNR has a comprehensive synthetic minor operation permit, or FESOP, program. These permits are very similar to the Title V permits issued by the WDNR, and follow much of the same format. The FESOPs contain a very thorough preliminary determination, and the permits are structured with the same emission unit table format as the Title V permits, thus the FESOP's essentially have the same content and organization benefits as the Title V permits identified above.

### **B. Areas Needing Improvement**

#### **Timely Permit Issuance**

As of December 30, 2004, WDNR had issued all of its initial Title V permits. Nevertheless, WDNR still had a backlog of FESOP, Title V renewal, and Title V modification permits. In its August 2005, NOD response, WDNR provided a FESOP issuance strategy and committed to completing issuance of its remaining FESOP permits prior to March 4, 2006. On January 17, 2006, WDNR completed issuance of its FESOP permits. However, as of April 2006, WDNR still has a backlog of approximately 100 Title V renewal permits and approximately 60 Title V permit modifications to be issued. WDNR indicated that its next permitting priority will be to complete issuance of its Title V renewal permits, and that it will be developing an issuance strategy to do so.

#### **Permit Data and Tracking**

Although WDNR posts its permit files on a public webpage, the information available on this webpage could be improved. For example, the system is not searchable or sortable. Therefore, it is very difficult, for example, to locate only certain types of facilities, or to view only newly drafted permits, or to find a source in a particular town, or near an address. While the permit numbers used by WDNR generally indicate the type of permit (Title V, FESOP, renewal, revision, etc.) the type of revision, such as a minor modification to a Title V permit, could be identified. One of WDNR's APII workgroups has begun working to address some of these issues by improving the information on the on-line permit system.

Further, many permit files on-line are missing documents. For example, the response to comments document is sometimes not included. Additionally, some of the Title V renewal permits

refer to the original Title V permit, which may not be maintained in the on-line database once the renewal is issued. To begin addressing these issues, in April 2006, WDNR issued internal guidance to its permit writers regarding the documents that need to be included in the on-line permit file.

WDNR provides USEPA with permit data updates required for quarterly national reporting. The information includes data such as: the total number of Title V applications received, total number of FESOPs issued, number of expired Title V permits, number of minor and significant Title V permit modifications issued, and other data. WDNR has indicated that it cannot accurately obtain and report some of this data. For example, WDNR reported that it is unable to report its minor and administrative Title V permit modification actions. In addition, WDNR used to provide USEPA with a copy of its permit database which contained data on all the sources which had submitted Title V applications. In September of 2002, WDNR stopped providing this database, and USEPA began to request data from WDNR on an as-needed basis.

#### **File Review Organization**

Before its site visit, USEPA provided WDNR with a list of permit types and requested that WDNR select a permit from each category for USEPA to review. Although USEPA was able to locate most of the documents necessary to complete the permit file review portion of this program evaluation, some of the permit files were difficult to locate. Additionally, USEPA found some of the files to be disorganized, and some files were missing major components, such as the permit application or final signed copy of the Title V permit.

#### **C. Other Noted Aspects of the Program**

##### **Email notification System**

WDNR noted during the questionnaire interview that it is considering an email permit notification system for interested persons. Although still in the developmental stage, WDNR stated that it believes this approach could be a more effective tool for reaching the public regarding permitting decisions than newspaper notice alone.

##### **Concurrent Review**

In September 2004, USEPA and WDNR signed a Memorandum of Agreement (MOA) to provide for concurrent public and federal

review of Title V permits (see Attachment 1). This agreement modified WDNR's Title V permit review process to allow for concurrent public review of the draft and USEPA review of the identical proposed Title V permit, effectively allowing WDNR to issue selected permits after 45, rather than 75, days. By allowing concurrent review, Wisconsin has been able to shorten the time necessary to take a final permit action. USEPA still retains the authority to require the full, sequential 45 day review period if USEPA deems it necessary.

## **V. Recommendations**

As discussed above, USEPA believes that WDNR has been issuing high quality, comprehensive permits. However, WDNR still has some permit backlog issues it needs to address. WDNR should prioritize reducing this backlog and keeping permit renewals and modifications current. Also, as described above, USEPA recommends that WDNR work to create a more organized permit filing system, including: providing or giving USEPA access to more tracking information than what is currently available on WDNR's public access permit webpage. WDNR could either create an additional column on its permit webpage to include a field for a permit type description, or WDNR may want to reconsider how it numbers its permits, to differentiate between the types of revisions. This would enable both the public and USEPA to determine the type of revision immediately, without needing to open each file. This would also help WDNR address its national data management needs, to better sort, track, and be able to report data for each permit type. In addition, making the column on the webpage that contains the permit draft date sortable would enable the public to better identify permits available for review.

USEPA also recommends that WDNR use the Title V permit process to quality assure both its on-line and official permit files. During the issuance of the Title V or renewal permit, WDNR should review the file and obtain any missing permits or documents to ensure that the file is complete and updated.

USEPA is concerned that all of the state initiated or mandated changes to Wisconsin's air permit rules and programs may result in less attention to ensuring that high quality and comprehensive permits continue to be issued. USEPA recommends that WDNR monitor its resources and initiatives to ensure that it maintains a balanced program.

## **VI. WDNR Comments**

WDNR maintains that USEPA has not been clear or consistent on several Title V permitting issues. For example, WDNR has requested national guidance on how to monitor and certify compliance for general permit conditions and insignificant emissions units. WDNR also believes that USEPA has not been clear as to what constitutes intermittent and continuous compliance, or what exactly constitutes a deviation or violation.

WDNR also has concerns with the interface between NSR and Title V permits, and has requested several times that USEPA provide national implementation guidance. For example, WDNR would like guidance on how to handle the situation where there may be conflicting permit requirements if a source obtains an NSR permit for a modification, but the source's Title V permit has not yet been updated. WDNR also would like guidance on how to implement the NSR reform changes within the Title V permit program, especially when a project does not require a permit under NSR, but may still need a permit under Title V. WDNR maintains that the Title V permit program should be looked at with respect to the NSR reform rules, or reform won't actually allow for any quicker changes or permit relief if a source still needs to wait for a Title V permit modification.

Additionally, WDNR has a concern in regard to the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) program, primarily with support for the area source Maximum Available Control Technologies (MACT) categories. With USEPA moving these sources outside of the Title V program, it will be difficult for WDNR to maintain the resources to follow-up on inspections and correspondence with affected facilities. Non-Title V funding is limited and with USEPA grant restrictions a distinct possibility, WDNR's ability to uphold this part of the program will not be easy, especially when needing to meet a Compliance Management System that requires inspections of FESOPs on a recurring frequency. WDNR is evaluating how best to manage this workload, but devoting adequate resources to it may not be possible.

## **VII. Good News Stories**

According to Wisconsin's response to the questionnaire, the Title V program has allowed WDNR staff to gain a better understanding of sources' applicable requirements and has increased facilities' awareness of their compliance obligations. In the process of drafting Title V permits, WDNR has reviewed past permitting decisions, and has been able to determine if any older sources or emission units were operating without the correct permit. WDNR permit writers also began writing permit limits in a more practically enforceable way, and gap filling monitoring conditions if necessary to ensure compliance.

One area in particular that has benefited from the Title V program is an increased accuracy of emissions reported. Because the Title V program created an annual emission fee, sources worked to ensure that emissions were accurately calculated and quantifiable so they weren't overpaying. Better data is now available for reporting to the emissions inventory. Some sources subject to Title V permitting also worked on reducing their emissions, or took emission restrictions to lessen their fees.

Another area that benefited from the Title V program was that WDNR received better compliance data. This compliance data helped WDNR prioritize sources for inspections. Also, WDNR typically conducted inspections before a source's Title V permit was issued to get a better understanding of the source's operations and emissions units.